

A Great Britain, George I.

206

A N

ACCOUNT OF THE DEBATES

For and Against the

BILL

For Punishing

Mutiny and Desertion.

With the

PROTESTS on that HEAD.



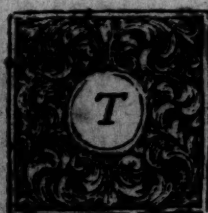
L O N D O N :

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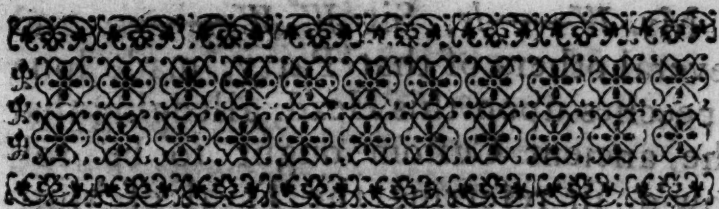


PREFACE.



HIS Having been much talk'd of, and maliciously improv'd by the Government's Enemies, it must needs be as satisfactory to all Loyal Subjects to see this Matter set in a fair Light, as mortifying to the disaffected Party, to see their Arguments against a Law so necessary at this Juncture, so fully and judiciously answer'd.

Feb.
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February 4.



THIS Day Mr. *Craggs*, Secretary of War laid before the House pursuant to their Address to his Majesty, the Articles of War for keeping the Troops under good Discipline, and after the Order of the Day was read for going into a Grand Committee upon the Bill for regulating the Forces to be kept in Pay, the House empower'd the Committee to insert a Clause to take away the unreasonable Protection formerly granted to Soldiers, by which they could not be arrested nor sued by their lawful Creditors; and also another to prevent their being arrested in Sham Actions. The House went accordingly into a Grand Committee, and a Motion was made to alter a Clause in the Bill, importing, *That Mutineers and Deserters should be try'd by a Council of War, and punish'd by Death, and instead thereof, to insert, That they should be try'd by the Civil Magistrate.*

Mr. W——le, Sir W. W——m, and several others of that Party, made long Speeches upon this Head, alledging that the ancient Custom ought to be follow'd, in referring the Tryal of Mutineers and Deserters to the Civil Magistrates, adding, *That a Council of War was directly contrary to the Liberties and Laws of Great-Britain, and a Thing unheard of in Time of Peace.* They supported what was said by Instancing in what was done in the Reigns of King William and Queen Anne, who, as soon as the Peace of Ryswick and that of Utrecht were concluded, agreed that the Bill for punishing Mutineers and Deserters, by a Council of War, should be void, and therefore they argued, that since the Kingdom enjoy'd a profound Peace the Bill ought to be thrown out.

But Mr. Cr——gs, Mr. A——by, and several others answer'd this by divers excellent Speeches, importing, That 'to reject such a Clause was the same thing, 'as to disband the Troops, since thereby 'the Soldiers wou'd have an Oppotunity to live in a Licentious manner without Discipline, and to desert with Impunity whenever they had a Mind to it; but that the Parliament having granted

‘ granted the King a certain Number
 ‘ of Troops, it was just that his Maje-
 ‘ sty should have them in Readiness on
 ‘ all Occasions; and therefore it was
 ‘ absolutely necessary to keep them un-
 ‘ der a strict Discipline, as was practis’d
 ‘ by all the Neighbouring Powers, and
 ‘ to punish Mutineers and Deserters,
 ‘ which cou’d not be done without esta-
 ‘ blishing a Council of War. In fine,
 ‘ after several Debates, which held till
 nine at Night, the Question being put,
 Whether Mutineers and Deserters shou’d
 be try’d by a Council of War, ’twas
 carry’d in the Affirmative by 247 against
 229. And then the farther Considera-
 tion of the Bill was put off to the *Thurs-*
day following.

’Tis observable that this Day there
 were 476 Members in the House, who
 all voted *for* and *against* the Bill, except
 three *Whigs*, and six or seven *Tories*,
 who went out before the Question was
 put.

The Bill being read a second Time,
 and order’d to be engross’d on the se-
 venth; it was read a third Time on *Wed-*
nesday the 12th; and upon the Question,
Whether it should pass or not? It was car-
 ry’d in the Affirmative by 186 against
 105, and sent by Mr. *Craggs* to the
 Lords,

Lords, who read it the first Time on the 13th, and order'd it to be read a second Time on *Tuesday* the 18th, when all the Lords being summon'd, the Bill was read a second Time. The E. of Ox——d alledg'd, ' That this Bill and ' the keeping up of an Army in Time ' of Peace, would endanger the Liber- ' ties of the People.

The Lord St——pe answer'd, ' That ' the Nation had the Happiness to be ' govern'd by a Prince, who, ever since ' his Accession to the Crown, had con- ' vinc'd all the World, that he desir'd ' no Troops any farther than he had ' need of them for the Safety and Tran- ' quillity of his Subjects ; that it cou'd ' not be deny'd that the Number of ' Troops which was kept on Foot, was ' very moderate, considering the pre- ' sent State of Affairs at Home and A- ' broad ; that *Great-Britain* had still the ' the Misfortune to harbour a great ' Number of the *Pretender's* Party, which ' was considerable also in foreign Coun- ' tries, and only sought for an Oppor- ' tunity to take advantage of the un- ' happy Divisions in this Kingdom : ' That the different Interests of *Spain*, ' *France* and *Italy*, requir'd the Conti- ' nuance of those Forces that were al- ' ready

' ready on Foot; that the Emperor
 ' and the King of *Spain* were actually
 ' at War; that the King of *Great-Bri-*
 ' *tain* was engag'd by a Treaty, con-
 ' cluded about a Year ago, to gua-
 ' rantee the Neutrality of *Italy* (which
 ' is now manifestly violated, and like
 ' to be attended with very bad Conse-
 ' quences, that his Majesty was also en-
 ' gag'd to maintain the Emperour in
 ' the Possession of his Dominions in *I-*
 ' *taly*: That therefore it was prudent
 ' to keep up a sufficient Number of
 ' Troops, as well for answering the En-
 ' gagements which the Crown was en-
 ' ter'd into, in order to maintain the
 ' Peace of *Europe*, as for securing our
 ' selves against any Insults from Abroad,
 ' and to suppress the Insolence of Ene-
 ' mies at Home.

To this the E. of *St——d* said, ' That
 ' he was very much surpris'd to see
 ' Falshoods asserted for Matters of Fact,
 ' and that he thought himself oblig'd
 ' to observe to the House, that by the
 ' Treaty of *Utrecht*, the late Queen was
 ' only made Guarantee of the Evacua-
 ' tion of *Italy*, and a Cessation of Arms
 ' in that Country, till the General Peace,
 ' which the Bp. of *L——n* cou'd also
 ' testify.

To

To which the Lord *St—pe* reply'd,
 ' That the Face of Things was alter'd
 ' by the Treaties lately concluded with
 ' the Emperor, and with *France*.

This gave Occasion to the Lord *N—b*
 and *Gr—y* to say, ' That since there
 ' was such a Treaty, it was fit the
 ' House shou'd know the Contents of
 ' it; and therefore he mov'd for an Ad-
 ' dress to the King, that his Majesty
 ' wou'd be pleas'd to order the last
 ' Treaty made with the Emperour, to
 ' be be laid before the House; and the
 ' Motion was agreed to; after which,
 the Bill was again referr'd to a Commit-
 tee of the whole House on the *Thurs-*
day following.

On *Thursday* the 2^{ctb}, the Lords
 went into a Committee accordingly,
 when there were several long Speeches
for and *against* the Bill, so that the De-
 bates lasted till eight at Night.

The Lord *Tr—r* propos'd (among
 others) to insert a Clause in the Bill to
 prevent the Powers of a Council of
 War from extending so far as to con-
 demn a Delinquent to Death, or to
 lose any Member; which being put to
 the Question, was rejected by 91 Votes
 against 77.

The Lord *Har-* propos'd another Clause to be inserted in the Bill, for obliging the Officers and Soldiers to the same Subjection and Obedience to the Civil Government, as the Laws require in others. But his Motion was likewise rejected by 83 against 77.

The other Lords who spoke against the Bill, were the D—s of *B—ks* and Lords *G—ck*, *B—ley*, *Ab—don*, *An—sea*, *P—t*, *J—y* and *T—nd*, who repeated all that had been said the *Tuesday* before against keeping up an Army in Time of Peace, and the Authority of Councils of War, adding, ' That in time of War, no body cou'd be ' try'd by such Councils, that they were ' Innovations which tended to the Ruin ' of the Liberties of the Subjects, and to ' the Subversion of the fundamental ' Laws of the Kingdom, because it was ' to the last Degree unjust, to take away ' the Power of Judicature from the Civil ' and National Judges, to put it into ' the Hands of Persons ignorant of the ' Laws on which the Liberty of their ' Country depend.

' That it seem'd also more necessary ' to oblige the Officers to do Justice to ' the Soldiers, than to give them a new ' Power over 'em; That it was really
B
hard

' hard that Men, who had so often ex-
 ' pos'd their Lives in the late War, for
 ' the Good of their Country, shou'd be
 ' depriv'd of the Privileges enjoy'd by
 ' their Countymen; and be more ex-
 ' pos'd than any other of the King's
 ' Subjects: That as to the Troops
 ' which remain'd on foot, the King,
 ' whenever he pleas'd, cou'd augment
 ' them in six Weeks time from 16000 to
 ' 30000 Men, and that the same Argu-
 ' ment now made use of for keeping so
 ' great a Number of Troops on foot,
 ' might be brought into Consequence,
 ' and urg'd at any time hereafter.

' That there was no Mention of Mu-
 ' tiny and Desertion in the Common
 ' Laws of the Kingdom, and that the
 ' Liberty of the Nation wou'd suffer
 ' very much by this Bill, if it pass'd.

Their Objections against the Bill were
 solidly answer'd, and confuted by the
 Lords St—pe, Con—by, P—ker, Ch—lm-y,
 On—w, Ca—et, Sun—d, and the Ld. Ch—r.

They shew'd that this Bill was so far
 from tending to ruin the Liberties of
 the Subjects of *Great-Britain*, that it
 was a Sovereign Remedy for maintain-
 ing them; that without Military Dis-
 cipline, 'twou'd be impossible to keep
 Soldiers in Arms. That those who voted
 against

against the Punishment of Mutineers and Deserters, did by so doing encourage them to commit those Crimes; and that none but Persons who were for another Rebellion, cou'd be against the Punishments due to such Crimes; that a Time of Peace was not always a Time of Safety; and that tho' we now enjoy'd a Peace, yet we were not perfectly secure, since it was notorious, that the suppos'd Right of the *Pretender*, was still endeavour'd to be supported by a considerable Number of his Party, both at Home and Abroad; that tho' it was certain the King was sure of the Affections of the greatest Part of his wealthiest and most considerable Subjects; yet the Poyson spread among the Common People, being not entirely expell'd, might still break out against the Government, and there were disaffected Persons, who only waited for a favourable Opportunity to put their pernicious Designs in Practice; from which they were only restrain'd by seeing the Number of Troops kept on foot, and which wou'd scarce be of any Service against them, if this Bill was rejected; that they cou'd not but be exceedingly amaz'd at the Conduct of the Justices of the Peace in many Places, who were

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very

very negligent of the publick Peace and good Order; and at the proceedings of some Persons, who question'd the legality of Confiscating one Inch of the Lands of those that were concern'd in the late Rebellion: And finally, that tho' we were in Peace at Home, yet Persons of the greatest Learning and Piety were still of Opinion, that divine Providence ought not to be too far tempted, by neglecting to take those Precautions which Prudence commands.

The Lord C——t shewing the Danger which the Government would be in if the Army was render'd useless, by rejecting the Bill, said, ' That as there
' was no Appearance that any Member
' of the Upper House would forget
' himself so far as to plead for the keep-
' ing up of a greater Number of Forces,
' than what was necessary for the De-
' fence of the Government, so he hop'd
' none would be found so weak or un-
' advis'd as to desire less.

There was another Lord, who replying to one of the opposite Party, concluded his Speech with this Scripture Expression, *That he who went about to pull down what he had built up, made himself a Transgressor of the Law.* These Debates lasted till about 7 at Night.

The

The farther Debates were adjourn'd to the next Day, (viz. *Friday* the 21st.) when most of those Lords who were against the Bill, mov'd, ' That the Army might be reduc'd to 12000 Men, ' to ease the Nation, and to free it from ' the Inconveniencies they labour'd under from the 16000 Men propos'd to ' be continued.

They made Use of all their Common Place Topicks, to shew the dangerous Consequences of the Bill, which according to them, tended to no less than giving the Legislative Power to a Council of War, and struck at the most fundamental Laws of the Kingdom.

But the Lords of the other Side answer'd every Article, and shew'd ' with ' a great deal of Force the Necessity ' there was of keeping this Number of ' Troops on Foot. They represented, ' That the Spirit of *Jacobitism*, which ' still rag'd in this Kingdom, requir'd ' no less than 16000 Men to be continu'd, to keep that Party in Awe: ' That it could not be deny'd all possible Measures had been taken to reduce the Debts of the Nation as far ' as the publick Safety and Credit permitted: That by the late Reduction ' of Interest 300000 *l.* Sterling *per Ann.* ' had

' had been already sav'd, and that eve-
 ' ry Body was nevertheless very well
 ' satisfy'd : That perhaps in a short
 ' Time they might be able to save much
 ' more by another Reduction : That by
 ' a Speech made last Year in the House
 ' of Commons, the Credit of the Na-
 ' tion was so far lessen'd, that they
 ' found it difficult to borrow 200000 l.
 ' upon the Land-Tax, at 5 *per Cent.* In-
 ' terest, whereas this Session they had
 ' borrow'd the whole Sum immediately
 ' at 3 *per Cent.* which never was done
 ' before in the Memory of Man. That
 ' the surest and only Method to main-
 ' tain this publick Credit was to con-
 ' tinue 16000 Men on Foot at least this
 ' Year, and that on the contrary, to
 ' reduce them to a lesser Number, was
 ' the Way to ruin the said Credit en-
 ' tirely : That besides, there was an in-
 ' dispensible Necessity of keeping up the
 ' same Number of Troops, because all
 ' the Potentates of *Europe* were aug-
 ' menting their Forces ; and that there
 ' was Reason to fear that some new
 ' Designs were form'd against *Great-*
 ' *Britain.*

The Lord Ch——r in particular said,
 ' That after having maturely weigh'd
 ' the Afair, and divested himself of all
 Man-

‘ Manner of Prejudice, he consider’d it
 ‘ not as a Person invested in that Post
 ‘ with which he was honour’d, but as
 ‘ a meer private Man, who was only
 ‘ concern’d for the Good of his Coun-
 ‘ try : That in this Quality, and accor-
 ‘ ding to the Dictates of his Conscience,
 ‘ he thought it was absolutely necessary
 ‘ for the Support of the present Go-
 ‘ vernment, and for the Safety of the
 ‘ Nation, to keep up the Number of
 ‘ Forces mention’d in the Bill : That
 ‘ he was the more confirm’d in this O-
 ‘ pinion, when he consider’d that the
 ‘ Pretender and his Adherents founded
 ‘ all their Views chiefly on the Hopes
 ‘ that were given them of disbanding
 ‘ most of the Troops : That indeed he
 ‘ was perswaded, that the whole Body
 ‘ of the Nobility, who compos’d that
 ‘ august Assembly was inviolably at-
 ‘ tach’d to the King as well as most of
 ‘ the Gentlemen, the chief People in
 ‘ the Country, all the Merchants, &c.
 ‘ but that as to the Populace, it could not
 ‘ be deny’d that the Minds of many of
 ‘ ’em were poison’d as well as abundance
 ‘ of People of a more eminent Figure :
 ‘ That the Fears with which they were
 ‘ affectedly prepossess’d, were Chimeri-
 ‘ cal, whereas the Dangers that were
 ‘ to

' to be apprehended from the Pretender
 ' and his Party, were visible and real :
 ' That in all Appearance, the late Re-
 ' bellion had never broke out if we
 ' had had the same Number of Troops
 ' on Foot at first as now : That it was
 ' all wrong to talk of the Fundamental
 ' Laws of the Kingdom in this Affair,
 ' since the Design of this Bill was only
 ' to support and strengthen the present
 ' Government, and the Protestant Suc-
 ' cession, against the Efforts of vigilant,
 ' bold and enterprising Enemies ; and
 ' that in fine it was the more necessary
 ' to be upon our Guard, because the
 ' Episcopal Ministers in *Scotland*, had
 ' again the Impudence to mount the
 ' Pulpit, and to preach Rebellion.

These Debates lasted till 8 a Clock at
 Night, when the Question was put,
 Whether the fix'd Number of 16000
 Men shou'd remain in the Bill ? And it
 was carry'd in the Affirmative by 72 a-
 gainst 50.

Then the Lord N——b and Gr——y
 mov'd, That this Matter might be far-
 ' ther debated on *Tuesday* next ; but
 the Lords of the other Side shew'd the
 Necessity there was, that the Resolution
 they had just pass'd, shou'd subsist ; and
 the Question being put, Whether the

Lord Cl——don, as Chairman of the Committee shou'd leave the Chair, there were 74 for the Negative, against 43 for the Affirmative: So that the Committee was continu'd; and it was at length resolv'd without a Division, that Seamen shou'd also be subject to the Councils of War, in the same Manner as the Land-Forces, and agreed to proceed farther on the Bill next Day, viz. *Saturday*.

On *Saturday* the Lords proceeded farther on the Bill; against which new Objections were rais'd, but as strongly confuted as the former.

The Lord St——pe in particular said,
 ' That all that had been hitherto al-
 ' ledg'd against the Bill, was reduc'd to
 ' chimærical Fears, that he defy'd any
 ' one to charge the present Ministry
 ' with the least Thing that cou'd give
 ' the People any Cause to be afraid of
 ' their Liberties; and that if they had
 ' been oblig'd to keep up a greater Num-
 ' ber of Troops than formerly, it was
 ' principally owing to the Peace of U-
 ' trecht.

The E. of Str——d declaim'd against the Reflections made upon that Peace, and undertook to make an Apology for it, by magnifying the Advantages that redounded from it to *Great-Britain*, with
 C respect

respect to its Trade with *Spain*, which occasion'd farther Debates, that lasted till seven at Night.

The foreign Prints from whence these Debates are translated, make no Mention of what was said in Reply to his Lordship, but that may be easily supply'd, since 'tis very well known that our Trade with *Spain* was left upon a very precarious Foot by the Treaty of *Utrecht*; and that the Advantages now secur'd to the Nation by that Trade, are owing to such Treaties as have been made with that Crown since King *George's* happy Accession to the Throne of *Great-Britain*, his Majesty having obtain'd such Terms from King *Philip*, as either were not in the Power or Inclination of the late Queen's Ministry to obtain; tho' they sacrific'd the Emperor, with all his faithful Confederates; and particularly the Blood of the Gallant *Catalans*, as well as the publick Faith of our Nation, to settle King *Philip* on the Throne of *Spain*.

On *Monday* the 24th the Lords read the Bill the third Time, and pass'd it without Amendment, by 67 against 40, besides 20 Proxy's on each Side of the Question: After which the 40 Lords then present, who oppos'd it, drew up
and

and sign'd the following Protests, and caus'd 'em be inserted in the Journals of the House, as follows.

The Question being being put, Whether in the Bill, intitl'd, *An Act for punishing Mutiny and Desertion, &c.* a Clause might might be inserted, 'That the Punishments inflicted by a Council of War shou'd not extend to Death, or Mutilation of Members? And it being carry'd in the Negative: We whose Names are subscrib'd, do protest against this Resolution:

1. Because the Military Law, which by the Tenor of the Bill permits the inflicting of Death or Mutilation in Time of Peace, was not put in Practice the first Year of this Reign, and never in this Kingdom under any former Reign by Consent of Parliament; but on the contrary, as often as such a Power was endeavour'd to be introduc'd, the Parliament oppos'd it, and condemn'd it as a thing contrary to *Magna Charta*, and incompatible with the Fundamental Laws and Privileges of a Free People.

2. Because, that after the Treaties of *Ryswick* and *Utrecht*, in the several Reigns of King *William* and Queen *Anne* of glorious and happy Memory,

' such a Power was never given to any
 ' Council of War: Notwithstanding
 ' which, 'tis certain, that the Forces
 ' which were then on foot observ'd an
 ' exact Discipline.

' 3. Because neither this Bill, nor any
 ' other known Law or Rule determines
 ' or specifys those Words or Actions,
 ' in which the Crimes of Mutiny and
 ' Desertion consist, nor what it is to ex-
 ' cite, cause a Mutiny, and be concern'd
 ' in it: And by consequence, the Judges
 ' who compose a Council of War have
 ' a Power to call what Words and Ac-
 ' tions they please Crimes of Desertion
 ' and Mutiny, and to take away the Life
 ' of any Officer or Soldier in conse-
 ' quence of such an Arbitrary Decision.

' 4. Because tho' Death were the Pu-
 ' nishment decreed in Time of Peace,
 ' for Mutiny, Desertion or other Diso-
 ' bedience to a Lawful Order, we judge
 ' that the Nature of such Crimes, ought
 ' to be first of all determin'd by this Bill,
 ' and that when the said Crimes are de-
 ' clar'd Capital, the Judgment thereof
 ' ought to be left to the ordinary Courts
 ' of Judicature, so that the Officers and
 ' Soldiers under Prosecution may enjoy
 ' all the valuable Privileges which be-
 ' long to all the Subjects of *Great-Bri-*
 ' *tain*

'tain by their Birth-Right. Besides it
 ' does not appear to us, that the least
 ' Prejudice will arise from hence to the
 ' publick in Time of Peace, or if
 ' any Inconveniencies should happen
 ' that they would be considerable e-
 ' nough to justify us in depriving the
 ' Soldiery of those legal Rights which
 ' belong to the least of their Country-
 ' men, and even to the greatest Crimi-
 ' nal.

' A Motion being made, and the Que-
 ' stion being put, Whether a Clause
 ' should be inserted in the Bill for se-
 ' curing the Subjection of the Officers
 ' and Soldiers to the Civil Magistrate,
 ' according to the Laws, and the same
 ' being carry'd in the Negative, We
 ' protest against this Resolution.

1. ' Because there is no Clause in this
 ' Bill that secures the Subjection or
 ' Subordination of the Military to the
 ' Civil Power, on which the Preserva-
 ' tion of our Constitution depends.

2. ' Because we judge that a great
 ' Number of Persons arm'd and go-
 ' vern'd by Military Laws, have the
 ' Power and also a natural Inclination,
 ' not only to disobey but likewise to
 ' insult the Authority of the Civil Ma-
 ' gistrates. And we are confirm'd in
 this

* this Opinion, both by the Experience
 * of what has happen'd in this Land,
 * and by the Histories of all Ages and
 * Nations, from whence it appears that
 * whenever Care has not been taken to
 * subject the Soldiery to the Laws of
 * their Country, the Military Power has
 * always subverted and swallow'd up
 * the Civil Power,

Sign'd D——n, Ab——n, B——le,
 Cas——n, Mo——y, N——mp——n, A. Bp.
 of R——k, H——rt, Pou——t, Wef——n,
 Sc——le, Da——th, R——nd, Ba——st,
 Ma——l, G——rd, Tad——r, T——nd,
 Bi——l-y, Ox——d, B——l, Tr——r,
 G——w-r, Fo——y, B——k-y, Bp. of
 Ch——r, G——ck, I——ay, St——rd,
 S——ay, An——y, D——set, Or——d,
 S——y and S——le, Bur——l-ton, Ca——ton,
 N——th and Gr——y, Del——ne, Lum——y,
 Bp. of R——b——r, Bp. of B——l, Bp. of
 Her——d, Lord C——mp——n, Earl of
 B——se, Earl of L——f——d.

The Arguments alledg'd in these Pro-
 tests, are sufficiently answer'd in the
 Debates beforemention'd; to which may
 be added, That there's no Cause to fear
 that

that his Majesty, who makes the Law the Rule of his Government, will suffer the Soldiery to insult the Civil Magistrates; who, in that Case, have the Laws on their Side as much as ever.

Nor is it supposable that a Prince so noted for a strict Justiciary, as well as an experienc'd General, will allow the Officers to exceed the known and establish'd Rules of Discipline, in punishing their Soldiers as Mutineers and Deserters, for what is not evidently prov'd to be so according to the Martial Law.

To conclude. After all the Objections that have been rais'd against the Bill by others, we hear of no Complaints by the Soldiers. They know very well that 'tis the Interest of the Officers to treat them with Humanity and Justice; and so much we may venture to say for the Officers in general, that they have given better Proofs of their Loyalty to the King, and of their Affection to our Constitution, than many of our Justices of the Peace; some of whom have given too much Reason to suspect that they would rather encourage than punish Mutiny and Desertion; for we have had Instances (more than enough) of the High-Church Party's discouraging King George's Friends in their Applications
for

for Justice against disaffected Persons,
while Criminals of that Sort have been
so far encourag'd as to escape with Im-
punity.

E I N I S.

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